

Schaller Trucking Corporation; R & H Trucking, Inc. and Teamsters Local 414, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 25-CA-13820 and 25-CA-13820-2

27 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 28 July 1982 Administrative Law Judge James T. Youngblood issued the attached decision. The Respondents filed exceptions and a supporting brief and the General Counsel filed a brief in reply to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² but not to adopt the recommended Order.³

¹ The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We agree with the judge's finding that the Respondents violated Sec. 8(a)(5) and (1) of the Act by their refusal to recognize the Union following the Union's request for recognition based on an authorization card majority. We further agree with the judge that a fair election has been precluded by the Respondents' unfair labor practices, and that a bargaining order is the appropriate remedy. In this regard we note that the Respondents engaged in repeated violations of Sec. 8(a)(1) and (3) of the Act and that these violations were of such a pervasive and extensive nature that our ordinary and usual remedies would not erase them sufficiently so as reasonably to ensure the future holding of a fair election. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In particular, the evidence establishes that at the outset of the Union's organizing activity all seven unit employees signed cards. Six of them did so within the plain view of Terminal Manager DeBolt. Four of these six were discharged in violation of Sec. 8(a)(3). The two card signers of whom the Respondents had knowledge and who were not discharged had told DeBolt that they regretted signing and wished to retract their cards immediately after learning that the Respondents would discharge card signer Michael Akin. Therefore, given the small size of the employee complement in question and the majority of the work force subjected to unfair labor practices, a bargaining order is necessary and appropriate.

³ We shall delete from the judge's recommended Order and notice pars. 1(a), (b), (d), (e), and (f). The judge made no 8(a)(1) findings corresponding to these recommended cease-and-desist provisions.

In addition to ordering the Respondents to offer reinstatement with backpay to the four 8(a)(3) discriminatees, we shall further order the Respondents to expunge from their files any reference to the unlawful discharges and to notify each of the discriminatees in writing that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against them. *Sterling Sugars*, 261 NLRB 472 (1982).

In his recommended Order, the judge provided that the Respondents shall cease and desist from "in any like or related manner" infringing upon employee rights guaranteed in Sec. 7 of the Act. However, we have considered this case in light of the standards set forth in *Hickmott Foods*, 242 NLRB 1357 (1979), and have concluded that a broad remedial

ORDER

The National Labor Relations Board orders that the Respondents, Schaller Trucking Corporation and R & H Trucking, Inc., each located in Indianapolis, Indiana, their respective officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they do not cease their union or concerted activities.

(b) Discouraging membership in or activities on behalf of Teamsters Local 414, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging or otherwise discriminating against employees in regard to the hire or tenure of employment, or in any other manner in regard to any term or condition of employment of any of Respondents' employees in order to discourage union membership or activities or other concerted activities.

(c) Refusing to bargain collectively with the above-named labor organization as the exclusive bargaining representative of the employees in the following unit which is an appropriate unit within the meaning of Section 9(b) of the Act:

All drivers employed by the Respondents at their Fort Wayne, Indiana, facility, but excluding all yard help, all office clerical employees, all mechanics, all janitors, all foremen, all professional employees, all guards and all supervisors as defined in the Act.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Michael Akin, Sally Todd, Timothy McKee, and Gregory Thiele immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or their rights and privileges, and make them whole for any loss of pay they may have suffered as a result of their discharges in the manner set forth in the section of the judge's decision entitled "The Remedy."

(b) Expunge from their files any reference to the discharges of Michael Akin, Sally Todd, Timothy McKee, and Gregory Thiele, and notify each of them in writing that this has been done and that

order is appropriate inasmuch as the Respondents have been shown to have engaged in egregious misconduct demonstrating a general disregard for the employees' fundamental statutory rights.

In light of the foregoing, we will issue an order in lieu of that of the judge.

the evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

(c) On request, bargain collectively with the above-named Union as the exclusive representative of the employees in the aforementioned appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at their places of business in Fort Wayne and Indianapolis, Indiana, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondents' authorized representative, shall be posted by them immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with discharge if they do not cease their union or concerted activities.

WE WILL NOT discourage membership in, or activities on behalf of, Teamsters Local 414, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging or otherwise discriminating against employees in regard to the hire or tenure of employment, or in any other manner in regard to any term or condition of employment of any employees in order to discourage union membership or activities or other concerted activities.

WE WILL NOT refuse to bargain collectively with the Union as the exclusive bargaining representative of the driver couriers employed at the Fort Wayne, Indiana facility.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Michael Akin, Sally Todd, Timothy McKee, and Gregory Thiele to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their discharge and that the discharge will not be used against them in any way.

WE WILL, on request, bargain collectively with the Union as the exclusive bargaining representative of all the courier drivers in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and reduce to writing any agreement reached as a result of such bargaining.

SCHALLER TRUCKING CORPORATION;
R & H TRUCKING, INC.

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge. These cases were tried before me in Fort Wayne, Indiana, on March 15, 16, and 17, 1982, pursuant to a complaint and a consolidated complaint which issued on September 30, 1981, and October 22, 1981, respectively. These complaints allege that Respondents Schaller

Trucking Corporation (herein Schaller) and R & H Trucking, Inc. (herein R & H) have engaged in violations of Section 8(a)(1), (3), and (5) of the Act and allege that said violations are so serious and substantial that they warrant the entry of a remedial bargaining order. The Respondents filed an answer denying the commission of any unfair labor practices and object to the entry of any remedial bargaining order.

On the entire record and from my observations and the demeanor of each witness while testifying, and the brief filed herein, I make the following

FINDINGS AND CONCLUSIONS¹

I. THE BUSINESS OF THE RESPONDENTS

At all times material herein Respondent Schaller has maintained its principal office and place of business at 5702 West Minnesota, Indianapolis, Indiana, and at various other facilities in the State of Indiana, inclusive of a terminal located at Fort Wayne, Indiana (herein called the Fort Wayne facility), and is, and has been at all times material herein, engaged at said facilities and locations in the transportation of freight and commodities in interstate commerce. R & H also maintains its principal office and place of business at 5702 West Minnesota, Indianapolis, Indiana. Additionally R & H maintains other facilities in the State of Indiana, including the foregoing Fort Wayne facility, and is, and has been at all times material herein, engaged at said facilities and locations in performing services for Respondent Schaller. The record reflects and I find that both Respondent Schaller and Respondent R & H are each individually and collectively engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondents admit, and I find, that Teamsters Local 414, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Schaller is an Indiana corporation with its corporate offices located in Indianapolis, Indiana, where it is engaged as a common carrier in the transportation of freight by motor vehicle under authority granted by the interstate commerce commission. Its principal routes extend through Indiana and adjoining States. R & H is also an Indiana corporation with its corporate offices located in Indianapolis, Indiana, and pursuant to contract

with Schaller is engaged in the transportation of commercial instruments and small parcels by motor carrier. Schaller employs no driver employees but operates through a system of agents who provide contract driving services. During the month of August 1981,² Schaller employed 10 administrative personnel at its corporate office in Indianapolis, Indiana. At the same time R & H employed a total of 72 drivers in four terminals in Indiana. These terminals were located in Indianapolis, Fort Wayne, South Bend, and Washington, Indiana. Of the 72 drivers 7 worked at the Fort Wayne terminal, the facility at which the alleged unfair labor practices occurred. The drivers or couriers employed at the Fort Wayne terminal transport commercial instruments and parcels to and from banks, government agencies, and businesses located within a 300-400-mile radius of the city.

In the second or last week of July, driver Michael Akin of R & H was told by Larry Debolt, terminal manager for Schaller, that the Indianapolis office wanted the drivers to start running either one morning route or one afternoon route all the time and that they were supposed to work into this gradually.

Thereafter, on July 27, Akin made the first contact with the Union and on August 4 received authorization cards from union representative Chuck Yoder. On August 4 Akin distributed and obtained authorization cards signed by all seven of the Fort Wayne couriers. Six of the signatures of the employees were obtained by Akin in the parking lot outside the terminal immediately preceding a staff meeting conducted by Manager Larry Debolt on that day. The seventh signature, that of Kerry Van Meter, was obtained by Akin later that day after the meeting. At the staff meeting Debolt announced that he had received instructions from the corporate office to immediately implement new route assignments for the couriers. Debolt informed the drivers that henceforth each courier must drive only one morning route and/or one afternoon route every day of the week. In the past the couriers might drive one morning route on Monday, Wednesday, and Friday of each week and a different route on Tuesday morning with afternoon routes on Tuesday and Thursday. Apparently this arrangement was stopped and thereafter all drivers had to drive the same route whether it be morning or afternoon on each given day of the week. The drivers protested this new assignment but despite their protests the new arrangement was implemented on August 5.

There is no doubt that, on August 4, Larry Debolt was aware of the union activities of the employees before the meeting he held with the employees that day. In fact on that day he contacted Indianapolis and informed his superiors that he thought there was union activity going on at the terminal.

On August 6, Steve Cooper, the sales manager of Schaller, visited the R & H terminal in Fort Wayne. It was his intention to take the drivers to lunch in order to explain the reason for the current changes in the method of operation and to ease their discontent. Also it was his purpose to get some feedback from the employees and

¹ The facts found herein are a compilation of the credited testimony, the exhibits, and stipulation of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all of the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this Decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. Where it may be required I will set forth specific credibility findings.

² Unless otherwise indicated all dates refer to 1981.

also to inform the employees that their disciplinary records were going to be wiped clean and that from then on they would be starting out with a clean slate. Three drivers, Mike Akin, Sally Todd, and her brother, Timothy McKee, refused to attend the luncheon with Steve Cooper. According to the testimony of Larry Debolt on Friday, August 7, he received instructions from Indianapolis, specifically from Steve Cooper and Robert Lichter, assistant sales manager for Schaller, that he was to fire Akin, Todd, and McKee. He was to give Akin and McKee a choice of changing their attitudes or being fired but Todd was to be given no choice. That evening, August 7, Debolt discharged Michael Akin. McKee was not discharged that night, but on the next day Todd was discharged. On August 20 and 21 Gregory Thiele and McKee were discharged.

On August 25, the Union made a written demand for recognition upon both Schaller and R & H as the collective-bargaining representative of a unit composed of all drivers employed at the Fort Wayne terminal.³

A. The Alleged Unlawful Discharge of Michael Akin

As indicated Akin initiated the unionization of the employees at the Fort Wayne terminal by visiting the union office on July 27. On August 4 he distributed union authorization cards in the parking lot in front of the Fort Wayne terminal. This union activity of Akin and other drivers of R & H was observed by Larry Debolt, the terminal manager, and reported by him to the main office in Indianapolis. Debolt informed his superiors that he thought the drivers were signing union authorization cards.

On August 6 Steve Cooper visited the Fort Wayne terminal to have a meeting with the drivers. Three drivers, Michael Akin, Sally Todd, and her brother Timothy McKee, refused to attend a luncheon with Cooper.

Michael Akin was discharged on August 7. On August 7, Debolt received orders to fire Akin, Todd, and McKee and his instructions came from Cooper and Lichter. On Friday evening, August 7, Debolt had a conference with Michael Akin,⁴ and informed Akin that he definitely had to fire Sally Todd. He also informed Akin that he had to fire Akin and Tim McKee if their attitudes did not change. He told Akin that he had to drop everything. That everything had to be absolutely cold. Akin informed Debolt that he was not going to drop it and that he was not going to change his attitude by threatening his job. During this conversation Debolt continued to fill out the termination sheet which he gave to Akin.⁵ Akin testified that he went to the terminal the

next day with Sally Todd at 4:30 a.m. Debolt was there and he told Todd that he had to fire her because they could not communicate with her. He said that one of the reasons was that Todd and Akin were the only ones who do anything, including risking their jobs to get a raise. Akin asked Debolt what the real reason was for his discharge and told Debolt that being out in the parking lot was the only thing that Debolt had against him, and Debolt said yes and shook his head. Debolt stated that he did not want to get rid of them but it was their job or his. Later around August 31, Akin was offered work in Indianapolis and Washington, Indiana.

It appears that Michael Akin was one of the Respondents' most senior couriers at the Fort Wayne facility and prior to his termination had never been disciplined for any reason. As indicated the termination slip which was given to him at the time he was discharged indicated that he was discharged because of his attitude. As I can determine from this record the only change in Akin's attitude was the fact that in July he visited the Union and later on August 4 obtained union authorization cards. On that same day in full view of Terminal Manager Debolt he solicited the signatures of a majority of the employees of R & H working at the Fort Wayne terminal. This record clearly shows that Larry Debolt, the terminal manager, was aware of the fact that Akin was soliciting signatures on union authorization cards and he communicated this fact to his superiors in Indianapolis, Indiana. This apparent bad attitude of Akin's cost him his job because on August 7 Larry Debolt was told by his superiors in Indianapolis, namely, Steve Cooper and Robert Lichter, that he must discharge not only Akin but Sally Todd and Timothy McKee, the three drivers who did not attend Steve Cooper's luncheon of August 6.

It is significant that all three of these employees signed union authorization cards in the parking lot at the terminal in full view of Larry Debolt on August 4. This fact was obviously communicated to Debolt's superiors in Indianapolis and this fact was further communicated to the Respondents when these three individuals failed to attend the luncheon given by Steve Cooper on August 6. On August 7, Debolt informed Akin that he must discharge him unless he dropped everything. While the specific word union was not used during this conversation, one would be completely stupid if he did not realize what Debolt was saying and Akin fully realized what he was saying and he so informed Debolt that threatening his job would not cause him to drop the Union. Debolt did not want to fire Akin and he indicated on his termination notice that he would rehire him.

In my view there is no doubt that Akin was discharged because of his union activities and that this was done in an attempt to discourage union activities and union membership. Therefore I conclude that Michael Akin was discharged in violation of Section 8(a)(3) and (1) of the Act. Additionally, I find that the statement to Akin by Debolt that he would have to discharge him if

³ At the hearing it was stipulated that a unit composed of all drivers employed at the Fort Wayne terminal was an appropriate unit for the purpose of collective bargaining.

⁴ On August 6, when Cooper visited the terminal prior to the luncheon he had a meeting with Akin and some other drivers in which Cooper told the drivers that there had been too many mistakes made on the routes and it would not be tolerated and "bad attitudes wouldn't be tolerated along with other things." He did not explain what the other things were.

⁵ The employee termination sheets, G.C. Exhs. 9(a) and 9(b), were offered into evidence. G.C. Exh. 9(b) appears to be a photostat of 9(a) except that there is some writing on 9(a) that does not appear on 9(b). It

would appear that 9(a) was altered after the photostat 9(b) was made. Akin in testifying identified only 9(b).

his attitude did not change was an independent violation of Section 8(a)(1) of the Act.

B. The Alleged Unlawful Discharge of Sally Todd

Sally Todd was also one of the more senior employees at the Fort Wayne facility. On August 4, Todd signed a union authorization card in the parking lot in full view of Larry Debolt. Also Todd read the union pamphlet in the presence of Debolt. There is no question but Debolt was aware of the fact that Todd had signed a union authorization card and was sympathetic toward the union. On August 6 around 10:30 or 11 in the morning she learned from Larry Debolt that Steve Cooper was there to take the employees to lunch. She asked if it was mandatory and was informed that it was not. Debolt informed her that Cooper was there to talk about the routes being changed. She told Debolt that she knew why the routes were being changed and that she thought Cooper was just there to smooth things over and that she said this in Cooper's presence. Larry Debolt responded that this was not so, that Cooper just wanted to talk about the route sheets. And again Todd said she knew why the routes were being changed. She got the feeling that she was being drawn into an argument and she left and did not attend the luncheon with Cooper that day. On August 8 she went to the terminal in the company of Mike Akin who had previously told her that she was to be discharged on that date. She stated that when they approached Larry Debolt that morning he told them that she and Mike Akin were terminated and gave her several reasons. One of the reasons was a statement that she had made in a meeting of August 4 about messing up the routes and she informed him that he knew better than that, and that she would not really intentionally mess up a route and Debolt told her that he knew that. Debolt mentioned the fact that she would not talk to anyone and stated that Cooper had come down and wanted to take us to lunch and that she had refused.

The termination slip made at the time of her discharge indicates that Todd was discharged because of her attitude. It appears that Todd had made several complaints in the past about the fact that the Respondents did not take out any withholdings, such as taxes, out of their pay. It was apparently in these areas that Todd was non-communicative. Again like Akin, Todd was terminated because of her attitude.

As indicated, Todd signed a union authorization card on August 4 in the parking lot in full view of Larry Debolt and read union literature in the presence of Larry Debolt. There is no question but that the Respondents had knowledge of the union activities of Todd. On August 6 when Steve Cooper arrived at the terminal to take the employees to lunch, Todd had a discussion with Cooper and became very angry and left. She did not attend the luncheon with Cooper. On August 7 Cooper and Lichliter informed Debolt that Todd must be discharged. Debolt testified that he did not want to discharge Todd, but that like Akin he had no choice. It was either him or them. The Respondents made a feeble attempt to indicate that Todd was discharged because of a statement she made in a meeting about mixing up keys, which Debolt clearly recognized was a joke, and because

of her attitude, and not being communicative. However, I find this totally pretextual. In my view there is no doubt that Sally Todd was discharged like Akin because of her union activities, and to discourage the employees' support for the Union, and to discourage membership in the Union, in violation of Section 8(a)(3) and (1) of the Act.

C. The Alleged Unlawful Discharge of Timothy McKee

Timothy McKee is the brother of Sally Todd and, like Todd, signed a union authorization card on August 4 in the parking lot in full view of Larry Debolt. I find that the Respondents had full knowledge of the fact that Timothy McKee had signed the union authorization card and was sympathetic to the Union. On August 7, according to the testimony of Larry Debolt, he was instructed by Steve Cooper and Robert Lichliter to discharge Michael Akin, Sally Todd, and Timothy McKee. On the night of August 7, according to the testimony of Larry Debolt, he had a conversation with Timothy McKee. Debolt said he had been instructed to fire McKee but that he wanted to have a talk with him to see if his attitude had changed. Although there was no discussion of the Union during this conversation Debolt told McKee that he had to have his answer that night whether his attitude would change or not. According to McKee he merely said that "I haven't said anything about anything so far and I haven't done anything wrong, so I would just go on like it has been." This apparently satisfied Debolt and he shook his hand and congratulated him for staying on and told him that he would be the top seniority driver and that he could select which route he wanted and which car he wanted to drive.

On August 19 McKee visited the union hall in Fort Wayne to fill out an affidavit apparently to be used in these Board proceedings. McKee was trying to contact Debolt that afternoon and he left the union hall number at the terminal for Debolt. When Debolt called him he informed him that he was in a meeting and that it was taking longer than he expected and that he would not be able to run his afternoon route. Debolt informed him that he would try to find somebody to replace him. Debolt called back about 10 to 15 minutes and said that he could not find anybody to run the route and that McKee would have to come in and make the run. McKee made his run. Two days later McKee was fired. On August 21 McKee received a call from Debolt who asked him to come to the terminal. McKee said he arrived at the terminal around noon. When he arrived, Steve Cooper and Larry Debolt were there with some other individuals. The other men left and Debolt said, "you know what this is all about don't you" and McKee responded that he had a pretty good idea. Debolt informed him that they were going to have to let him go for misdelivery of a package and for not giving 2-hour notice about being sick. Again Debolt did not want to discharge this employee but his hands were tied.

It is my conclusion that Timothy McKee, like Michael Akin and Sally Todd, was discharged because the Respondents were aware that on August 4 he had signed a

union authorization card. The Respondents had decided to discharge him on August 7, but when he satisfied Debolt that his attitude would change, meaning that he would no longer be in favor of the Union, Debolt gave him a second chance and allowed him to continue working. On August 19, McKee made a mistake by giving the union hall telephone number to Debolt, and having Debolt call him at that number. Debolt concluded that McKee was still entangled with the Union, and discharged McKee for that reason. It is my conclusion that McKee was discharged to discourage further union activities at the Respondents' plant and to discourage membership in the Union in violation of Section 8(a)(3) and (1) of the Act. The reasons given by the Respondents in my view were totally pretextual and were seized upon by the Respondents merely to give some semblance of legality to this otherwise illegal and unlawful discharge for union activities.

D. The Alleged Unlawful Discharge of Gregory Thiele

Gregory Thiele was employed by Respondent R & H on May 18, and on August 4 signed a union authorization card in the parking lot at the terminal. On August 6 he attended the luncheon given by Steven Cooper. At that luncheon Cooper told the employees "that the attitudes of the employees wouldn't be tolerated anymore" and he said that "other things that had come up recently wouldn't be tolerated." Thiele was not included in the group of employees that were to be discharged on August 7 and this was probably because he attended the luncheon on August 6 and was not in the company of Akin, Todd, and McKee, the drivers who did not attend that luncheon.

Thiele was discharged allegedly for an error in delivery. Apparently on August 20, Thiele deposited a satchel destined for a bank in Warsaw to a bank in Churubusco. Realizing his error at approximately 6 a.m. when he arrived at Warsaw, he phoned Larry Debolt who instructed him to complete his route, deliver the Churubusco satchel to that bank, then pick up the Warsaw satchel from Churubusco, and deliver it to Warsaw. Thiele later learned that Debolt had already picked up and delivered the satchel to Warsaw. When Thiele returned to the terminal, Debolt said nothing more about the incident. Rather Debolt asked him to drive an additional route not regularly assigned to him. Two to three hours later when Thiele returned to the terminal he was discharged for the delivery error. Thiele's error did not result in any monetary damage to the Respondents, to either of the banks, and the banks had not complained to the Respondents about the error. It is also pertinent to know that Thiele had not been disciplined for any reason prior to his discharge. It is also pertinent to know that the disciplinary policy of the Respondents in effect at the time provided for a written reprimand as the appropriate discipline for any employee's first defense.

In reviewing this matter, I note that Thiele, along with six of the drivers, signed union authorization cards in the parking lot which fact was known to the Respondents. Kerry VanMeter, the other driver, did not sign a card in the parking lot and there is no evidence that the Respondents were aware of his union activity. He was not

discharged. The other two drivers, Ashley and Baldus, who executed authorization cards in the parking lot, were also not discharged. However, according to the credited testimony of Ashley he learned on August 6 that Akin was to be discharged. He thereupon told Larry Debolt that he regretted having executed an authorization card and wanted to retract it. In fact he asked Debolt for Steve Cooper's telephone number so that he could inform Cooper. Debolt advised him that that was not necessary, that he would take care of it. Baldus on the next day advised Debolt that he regretted joining the Union and that he wanted to retract his authorization card. This obviously is the reason why these two employees were not discharged and as the Respondents had no knowledge that VanMeter had signed a union authorization card, he was not discharged. The remaining known union adherents were discharged. I have discussed the discharge of Akin, Todd, and McKee and have concluded that they were discharged for their union activities.

I also conclude that, by discharging Thiele, the Respondents eliminated all known union adherents. It is my conclusion that the Respondents discharged Thiele for his union activities in an attempt to discourage membership in the union. It is further my conclusion that the Respondents waited until August 20 to discharge Thiele because they were looking for a pretext such as used in this case, which was an error in delivery. I find that the reason given by the Respondents for the discharge was a pretext to cover up the illegal motive, that is, the employee's union activities. Therefore it is my conclusion that the Respondents in discharging Thiele violated Section 8(a)(3) and (1) of the Act.

E. The Alleged Violation of Section 8(a)(5) and the Requested Bargaining Order

There is little doubt that at all times material herein the Union represented a majority of the employees in the unit agreed upon by the parties to be appropriate. Five of the seven employees in the bargaining unit testified and authenticated their union authorization cards. Employee Akin testified that he observed the remainder read their cards before execution and watched them sign the cards. In these circumstances it is clear that on August 25, the date on which the Union made its demand for recognition, the Union clearly represented a majority of the employees in the appropriate bargaining unit, and I so find. The Respondents' complete silence and failure to respond or to extend recognition to the Union since that date constitutes, in my view, a clear violation of Section 8(a)(5) and (1) of the Act. The Union was the majority representative of the employees. It made a proper demand for recognition and neither of the Respondents gave the Union the courtesy of even a request for an election. On the other hand, the Respondents began their course of illegal conduct in discharging over 50 percent of the employees in the bargaining unit.

Under these circumstances the Respondents' unfair labor practices clearly would impede a fair election, and by these unfair labor practices it appears to me that the Respondents forfeit any rights they otherwise have had

to an election, and are obligated to recognize and bargain with the Union. Therefore, it is my conclusion that the Respondents be required to recognize and bargain with the Union effective August 25, 1981, the date the Union made its demand for recognition.

F. The Liability of the Respondents

At the outset of the hearing it became apparent that the important issue in this matter would be the employer or employers who would be liable to remedy the alleged unfair labor practices. Thus, the complaints ran against both R & H and Schaller. The theory of the General Counsel's complaint is that R & H and Schaller constitute a single integrated enterprise or, in the alternative, that they are joint employers.

Schaller and R & H are separate corporations and there is no common ownership. Schaller is owned by John V. Loudermilk, its president. R & H is owned by Robin Dillman, Loudermilk's daughter. Both R & H and Schaller share corporate offices in a building owned by Schaller's president, Loudermilk. R & H pays no rent for the use of this building and a sign identifies the building as the office of Schaller. The four terminal locations used by R & H are rent-free and are provided by Schaller. Schaller pays all utility and telephone bills incurred by R & H. R & H is not listed in the telephone directory of either Indianapolis or Fort Wayne. Its telephone number in Fort Wayne is listed in the directory under the name "Schaller Trucking Corporation, Courier Division." The vehicles used by the Fort Wayne couriers are leased by Schaller, and Schaller pays for the use of the cars and pays for all fuel used by them. Each vehicle bears a sign identifying it as property of Schaller.

Robin Dillman, president of R & H, is also employed by Schaller and receives a weekly salary from Schaller. Each of the terminal managers who supervise the four R & H terminals are also employed by Schaller. Thus, Larry Debolt, the manager of the Fort Wayne terminal, is employed by Schaller. Steve Cooper and Robert Lichliter, who made the decisions in this case to do the firing, occupy the positions of sales manager and assistant sales manager for Schaller. Neither Cooper nor Lichliter receives any remuneration from R & H. However, in conjunction with President Dillman, they direct and control the labor relations of R & H. Applicants for employment with R & H are initially screened by Schaller and only those who meet its employment qualifications are referred to R & H for hire. Dillman, Cooper, and Lichliter jointly hire R & H employees. The policies and operating procedures for Schaller constituted the rules and regulations which governed the conduct of R & H drivers during all times material herein. Default, an admitted supervisor employed by Schaller, directs the day-to-day personnel matters arising at the Fort Wayne terminal. Wage rates of R & H drivers are determined by Dillman, Cooper, and Lichliter. Each corporation maintains separate bank accounts, and file separate tax returns and annual reports with the Secretary of State. All records of R & H are maintained at the Schaller Corporate Offices by Schaller. All bookkeeping, accounting, billing, payroll, marketing, and sales and customer service functions are performed for R & H by Schaller. Personnel files of

R & H drivers are maintained at Schaller's offices; all bills of lading, delivery receipts, invoices, and other documents used by R & H couriers bear the inscriptions "Schaller Trucking Corporation." Identification cards issued R & H drivers indicate that each is an employee of Schaller Courier Service; and all payroll checks issued R & H drivers bear the insignia, "R & H Trucking, Inc., Agent, Schaller Trucking Corporation."

At the hearing Schaller asserted that the structure of its relationship with R & H resulted from an order of the Interstate Commerce Commission issued May 20, 1977. It is not the reason why Schaller has a relationship with R & H that governs this case, it is the nature of that relationship which determines whether or not Schaller shall be held as a respondent in this matter. I have carefully considered the Interstate Commerce decision, which was the result of a settlement, and conclude that decision cannot be used by Schaller as a means of avoiding its responsibilities under the Act.

Because these corporations do not have common owners or common officers, it is my conclusion that they do not constitute a single employer. However, because they share common management and supervision; share common corporate offices; R & H utilizes facilities provided by Schaller, and the fact that R & H is totally dependent on Schaller financially, it is my conclusion that the administrative functions of both companies are totally integrated. Additionally, Schaller holds R & H out to the public as its courier division. While these facts support a finding that the two constitute a single integrated enterprise, it is my conclusion that the evidence here also clearly establishes that Schaller exercises sufficient control over the terms and conditions of employment of R & H drivers to establish it as a joint employer, and I so find. See *Pomeroy's Inc.*, 232 NLRB 95 (1977); *Robbins Motor Transportation*, 225 NLRB 761 (1975), and *Pilot Freight Carriers*, 223 NLRB 286 (1976). Therefore, it is my conclusion that Respondent Schaller and Respondent R & H are jointly responsible for remedying the unfair labor practices found herein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, set forth above, occurring in connection with the Respondents' operations, described above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondents have engaged in and are engaging in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that the Respondents discharged Michael Akin, Sally Todd, Timothy McKee, and Gregory Thiele, because of their union activities in violation of Section 8(a)(3) of the Act. I shall recommend that the Respondents make them whole for any loss of pay which they may have suffered as a result of

the discrimination practiced against them. The backpay provided for them shall be computed in accordance with the Board formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).⁶

CONCLUSIONS OF LAW

1. Respondents Schaller Trucking Corporation and R & H Trucking, Inc. are joint employers within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local 414, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in

Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By unlawfully and discriminatorily discharging Michael Akin, Sally Todd, Timothy McKee, and Gregory Thiele, because of their union activities, the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. By refusing to recognize and bargain with the Union, the exclusive bargaining representative of the Respondents' employees in the appropriate unit, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

⁶ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).